



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2021-0366; FRL-10024-78-Region 9]

Air Plan Approval; California; San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the San Diego County Air Pollution Control District (SDCAPCD or District) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs) from gasoline transfers into underground stationary storage tanks at gasoline dispensing facilities. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the *Federal Register*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2021-0366 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional

submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Rebecca Newhouse, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3004 or by email at newhouse.rebecca@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. The State’s Submittal

- A. *What rule did the State submit?*

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1 - SUBMITTED RULE

Local Agency	Rule #	Rule Title	Adopted	Submitted
SDCAPCD	61.3.1	Transfer of Gasoline into Stationary Underground Storage Tanks	March 1, 2006	August 9, 2017 ¹

On February 9, 2018, the submittal for Rule 61.3.1 was deemed by operation of law to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved Rule 61.3: Transfer of Volatile Organic Compounds Into Stationary Storage Tanks (revised October 16, 1990) into the SIP on June 30, 1993 (58 FR 34906). Rule 61.3 applies to gasoline transfers into aboveground and underground stationary storage tanks at gasoline dispensing facilities (GDFs). SDCAPCD adopted a separate rule, Rule 61.3.1, to update requirements for gasoline transfers to underground storage tanks at GDFs on March 1, 2006, and CARB submitted the rule to the EPA on August 9, 2017.

C. What is the purpose of the submitted rule?

Emissions of VOCs contribute to the production of ground-level ozone, smog, and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. SIP-approved Rule 61.3 regulates emissions from gasoline transfers at GDFs. Rule 61.3.1, adopted in 2006, further limits VOC emissions from gasoline transfers into underground storage tanks at GDFs, and requires underground storage tanks at GDFs to have CARB-certified vapor recovery systems meeting a vapor control efficiency of 98% and CARB-certified and vapor tight components including poppetted dry breaks and fittings. Rule 61.3.1 includes requirements for weekly and monthly

¹ The District supplemented its submittal by providing additional proof of public notice, submitted by CARB to the EPA on December 28, 2020. Letter dated December 28, 2020, from Richard W. Corey, Executive Officer, CARB, to John W. Busterud, Regional Administrator, EPA, Region IX, transmitting the proof of public notice in The Daily Transcript, and Minute Order No.1 from the SDCAPCD Board hearing on October 14, 2020.

inspections, and expanded source testing and recordkeeping requirements beyond the requirements included in Rule 61.3. The District’s reasonably available control technology (RACT) analysis for the 2008 8-hr ozone National Ambient Air Quality Standard (2008 RACT SIP) states that, “[w]hile Rule 61.3 applies to both aboveground and underground storage tanks, Rule 61.3.1 applies only to underground storage tanks. Consequently, Rule 61.3.1 supplements, but does not replace Rule 61.3, as RACT for Stage I vapor recovery....”²

On December 3, 2020 (85 FR 77996), the EPA partially disapproved SDCAPCD’s 2008 RACT SIP for the source category covering the “Design Criteria for Stage I Vapor Control Systems - Gasoline Service Stations” (EPA-450/R-75-102) Control Techniques Guidelines (CTG). We refer hereafter to this CTG as the “Stage I Gasoline Transfer CTG.” The EPA’s August 10, 2020 proposal states that, “...Rule 61.3.1, which regulates sources in this category, was not properly noticed, and is thus not approvable. The District intends to re-notice Rule 61.3.1, which together with [Rule] 61.3 would establish current RACT for this category.”³

The SDCAPCD submitted a supplement to the original submittal of Rule 61.3.1, which was transmitted by CARB to the EPA on December 28, 2020, and included updated public notice documentation that cured the public notice deficiency from the original submittal of Rule 61.3.1.⁴

The EPA’s TSD has more information about this rule.

II. The EPA’s Evaluation and Action

A. *How is the EPA evaluating the rule?*

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control

² SDCAPCD, “2008 Eight-Hour Ozone Reasonably Available Control Technology Demonstration for San Diego County,” December 2016, 2-4.

³ 85 FR 48127, 48131.

⁴ Letter dated December 28, 2020, from Richard W. Corey, Executive Officer, CARB, to John W. Busterud, Regional Administrator, EPA, Region IX, transmitting the proof of public notice in The Daily Transcript, and Minute Order No.1 from the SDCAPCD Board hearing on October 14, 2020.

requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require reasonably available control technology (RACT) for each category of sources covered by a CTG document as well as each major source of VOCs in ozone nonattainment areas classified as moderate or above (see CAA section 182(b)(2)). The SDCAPCD regulates an ozone nonattainment area classified as a “Serious” nonattainment area for the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS) and a “Moderate” nonattainment area for the 2015 8-hour ozone NAAQS (see 40 CFR 81.305). Therefore, this rule must implement RACT. As this rule regulates only a subset of the sources covered by the CTG, our action evaluates whether Rules 61.3 and 61.3.1 together implement RACT for the entire Stage I Gasoline Transfer CTG source category.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation, and rule stringency requirements for the applicable criteria pollutants include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).
4. “Design Criteria for Stage I Vapor Control Systems-Gasoline Service Stations,” EPA-450/R-75-102, November 1975.

B. *Does the rule meet the evaluation criteria?*

This rule is consistent with CAA requirements and relevant guidance regarding enforceability, RACT, and SIP revisions. Specifically, the rule requirements sufficiently ensure

that affected sources and regulators can consistently evaluate and determine compliance.

Additionally, our analysis finds that Rule 61.3.1 and Rule 61.3 together represent current RACT for the Stage I Gasoline Transfer CTG, because the rules are more stringent than the CTG, and are generally consistent with requirements in other air districts for gasoline transfers into stationary storage tanks at GDFs. Lastly, Rule 61.3.1 will not interfere with any applicable requirements of the CAA. The TSD has more information on our evaluation.

C. *The EPA's recommendations to further improve the rule*

Our TSD for this action recommends several amendments to Rule 61.3.1, for consideration by the District the next time the rule is revised. Specifically, our TSD recommends amending the definition of “vapor leak,” removing language authorizing the use of the most current version of a specified ASTM test method, and adding a reference to the specific section of the California Code of Regulations that lists relevant vapor recovery system defects. Our TSD has more information regarding these recommendations.

D. *Public comment and proposed action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. Additionally, because the District corrected the procedural deficiency preventing Rule 61.3.1's approval into the SIP and we are now proposing such approval, and because our analysis confirms that Rules 61.3.1 and 61.3 satisfy RACT requirements for sources covered by the Stage I Gasoline Transfer CTG, we propose to find that SDCAPCD has rectified the deficiency identified in our partial disapproval of the District's 2008 RACT SIP submittal with respect to the Stage I Gasoline Transfer CTG. If finalized, this action will stop the sanction and federal implementation plan clocks for this CTG source category. We will accept comments from the public on this proposal until [**Insert date 30 days after date of publication in the *Federal Register***]. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the SDCAPCD rule described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the “FOR FURTHER INFORMATION CONTACT” section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: June 1, 2021.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

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